Case 3:13-cv-00728-G Document 2 Filed 02/13/13 Page 1 of 14 Paget

#### IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS DALLAS DIVISION

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MARK ROBERTSON, PETITIONER,

Civil Action No.

VS

\*DEATH PENALTY CASE\*

RICK THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION, RESPONDENT

3-13CV0728-G

#### MOTION FOR APPOINTMENT OF COUNSEL

Undersigned counsel Franklyn R. Mickelsen requests that this court appoint counsel to represent Mark Robertson in his federal habeas corpus proceedings. This motion is made pursuant to 18 U.S.C. §3599, 28U.S.C. 2254, and Art. 11.071(2)(e), TEX.C.CRIM.PRO. In support of this request, counsel states as follows:

#### **Procedural History**

Mr. Robertson was tried and convicted of capital murder in 265th Judicial District Court of Dallas County, Texas, and sentenced to death.

Pursuant to TEX. C. CRIM. PRO. Art. 11071, the Texas Court of Criminal Appeals approved the appointment of Franklyn R. Mickelsen to represent Mr. Robertson in his state post-conviction writ application. A timely petition for a writ of habeas corpus was filed thereafter filed with the state courts of Texas.

On January 9, 2013 the Texas Court of Criminal Appeals denied Mr. Robertson's application for writ of habeas corpus. See attached Ex. A. Counsel is now obligated to

move for the appointment of federal habeas counsel under 18 U.S.C. § 3599. See, Art.

11.071 § 2(e), TEX.C.CRIM.PRO. Texas law requires that counsel file a copy of the

motion with the Court of Criminal Appeals pursuant to Article 11.071, Sec. 2(e),

Texas Code of Criminal Procedure.

Right to Counsel

Throughout his previous state proceedings, Mr. Robertson has been represented

by court appointed counsel. Mr. Robertson was then and is now without the means to

retain counsel. A copy of Mr. Robertson's Application to Proceed in Forma Pauperis as

well as his notarized Inmate Account information print out are included as Attachment B.

Mr. Robertson has not previously filed a federal petition for a writ of habeas

corpus.

Mr. Robertson is entitled to the appointment of counsel. Mr. Robertson has

constitutional claims for relief which he will request be addressed be a federal court. He

is entitled to the assistance of counsel in order to present those claims.

WHEREFORE, PREMISES CONSIDERED, movant requests that the court

appoint new and qualified counsel to represent Mr. Robertson in the pursuit of his federal

remedies under 28 U.S.C.§2254.

Respectfully Submitted,

Franklyn R. Mickelsen

TX Bar No. 14011020

Broden & Mickelsen

2600 State Street

Dallas, Texas 75204

214-720-9552

214-720-9594 fax

#### **Affidavit**

My name is Franklyn R. Mickelsen. I am the movant in the foregoing motion for the appointment of counsel. The allegations are true and correct.

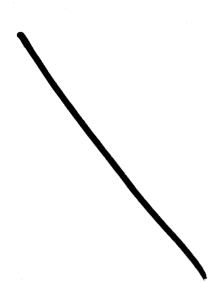
Franklyn R. Mickelsen

Before me appeared Franklyn R. Mickelsen, who states that the allegations in the foregoing motion for the appointment of counsel are true.

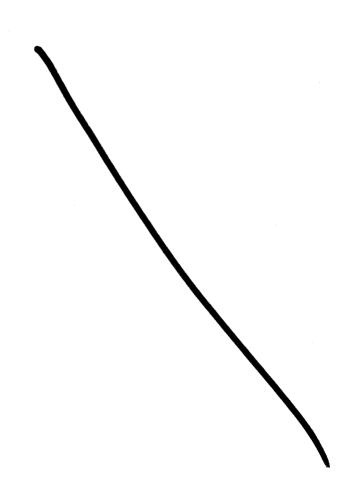
SWORN and SUBSCRIBED to, before me, the undersigned authority, on February 15, 2013.

LUCY MONREAL
Notary Public, State of Texas
My Commission Expires
August 04, 2015

NOTARY PUBLIC STATE OF TEXAS



### ATTACHMENT A





# IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-30,077-03

#### **EX PARTE MARK ROBERTSON**

ON APPLICATION FOR WRIT OF HABEAS CORPUS CAUSE NO. F-8985961-L IN CRIMINAL DISTRICT COURT NO. 5 DALLAS COUNTY

Per curiam.

#### ORDER

This is a post conviction application for writ of habeas corpus filed pursuant to the provisions of Texas Code of Criminal Procedure article 11.071.

Applicant was convicted in 1991 of capital murder. Tex. Penal Code Ann. § 19.03(a)(2). Based on the jury's answers to the special issues, the trial court sentenced him

to death. Art. 37.071(b). This Court affirmed applicant's conviction and sentence on direct appeal. Robertson v. State, 871 S.W.2d 701 (Tex. Crim. App. 1993). This Court denied relief on his first Article 11.071 application for a writ of habeas corpus. Ex parte Robertson, No. WR-30,077-01 (Tex. Crim. App. Nov. 18, 1998) (not designated for publication). Applicant later filed a subsequent application for a writ of habeas corpus which included a previously unavailable Penry claim. We vacated his death sentence and remanded the case to the trial court for a new punishment hearing. Ex parte Robertson, No. AP-74,720 (Tex. Crim. App. Mar. 12, 2008) (not designated for publication). In July of 2009, based on the jury's answers to the special issues set forth in the Texas Code of Criminal Procedure, Article 37.0711, sections 3(a) and 3(b), the trial court again sentenced applicant to death. Art. 37.0711, § 3(g). We affirmed applicant's sentence on direct appeal. Robertson v. State, No. AP-71,224, 2011 Tex. Crim. App. Unpub. LEXIS 154 (Tex. Crim. App. Mar. 9, 2011) (not designated for publication), cert. denied, 132 S.Ct. 844.

Applicant presented a single allegation in his application in which he challenges the validity of his sentence. After holding a live evidentiary hearing, the trial court entered findings of fact and conclusions of law and recommended that relief be denied.

This Court has reviewed the record with respect to the allegation made by applicant.

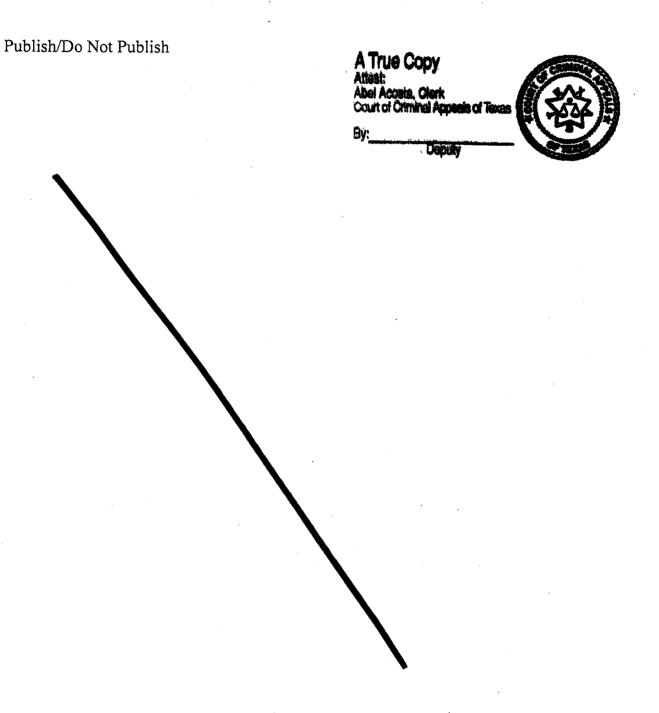
We agree with the trial judge's recommendation and adopt the trial judge's findings and conclusions, except for paragraphs 1, 2, and 3, which indicate that the allegation is

<sup>&</sup>lt;sup>1</sup> Unless otherwise indicated, all references to Articles are to the Texas Code of Criminal Procedure.

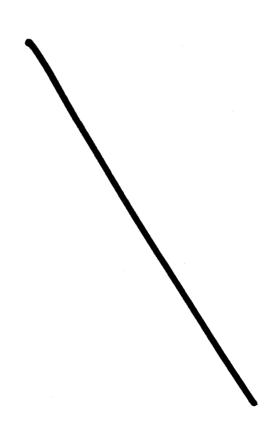
Robertson - 3

procedurally barred. Based upon the trial court's findings and conclusions and our own review of the record, relief is denied.

IT IS SO ORDERED THIS THE 9<sup>TH</sup> DAY OF JANUARY, 2013..



### ATTACHMENT B



#### Case 3:13-cv-00728-G Document 2 Filed 02/13/13 Page 9 of 14 PageID 11

## IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS

**Dallas DIVISION** 

	<b>、</b>										
Ma	rk Robertson #000992										
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	Polunsky Unit										
Place of Cont											
		CASE NO.									
	·	(Clerk will assign the num	nher)								
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	ad Livingston	APPLICATION TO PRO	CEED								
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	X 78711-3084	IN FORWA I AUI E	KID								
	name and address										
Defendant S	name and address										
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1.	Have you received, within the past 12 months, any money from any of the following sources?										
	a. Business, profession or form of self-employme		No □								
	b. Rent payments, interest or dividends?	Yes □	No □								
	c. Pensions, annuities or life insurance payments?		No □								
	d. Gifts or inheritances?	Yes 🗓	No □								
	e. Family or friends?	Yes <b></b> ✓	No □								
	f. Any other sources?	Yes □	No 🗆								
	If you answered YES to any of the questions abo	ve describe each source of	money and state the amount								
	received from each during the past 12 months.										
	1 get \$170 a month from a friend in England to										
	line on.		3								
2.	cluding any funds in prison										
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Yes ☑ No □ If you answered YES, state the total value of the items owned.											
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3.	Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property, excluding ordinary household furnishings and clothing?				
	Yes				
	If you answered YES, describe the property and state its approximate value.				
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	that a false statement or a clare (or certify, verify, or s 6).				
	Signed this the 3 off	_day of _Jan	uary	_, 20 <u>13</u>	
		Signature of	Lobelsu	000992 ID Number	
		Signature (	A A SMILLILL	1D 1 WILLION	

YOUMUST ATTACH A CURRENT SIX (6) MONTH HISTORYOF YOUR INMATE TRUST ACCOUNT. YOU CAN ACQUIRE THE APPROPRIATE INMATE ACCOUNT CERTIFICATE FROM THE LAW LIBRARY AT YOUR PRISON UNIT (OR OTHER DESIGNATED LOCATION AT YOUR INSTITUTION).

#### CERTIFICATE OF INMATE TRUST ACCOUNT

	I, the u	ndersigned authorized office	r of the	Polunsky Un	<u>t</u>	
where		Robertson			(name of institution)	
(name of inmate) as a prisoner, do hereby certify that:						
	(1)	On this day the prisoner ha	s in his accou	nt the sum of \$	·	
	(2)	During the past six months	, the prisoner	's:		
		Average monthly balance	was \$	· · · · · · · · · · · · · · · · · · ·		
		Average monthly deposits	to the prison	er's account we	ere \$	
	Attached is a certified copy of the prisoner's trust account statement (or institutional equivalent)					
showii	ng transa	ctions for the past six month	ıs.			
	Signed this 30th day of January, 2013.					
		<b>S</b>				
				Authorized Of	ficer	
				Institution of C	onfinement	
	Authorization					
	ırt any ir		al fee and any	subsequent inst	earcerated to withdraw and forward to allments ordered by a Court under the Court under the Prisoner/Plaintiff/Appellant	

CSINIB02/CINIB02 TEXAS DEPARTMENT OF CRIMINAL JUSTICE 01/30/13 10:15:42 TLMO/DC05027 IN-FORMA-PAUPERIS DATA TDCJ#: 00000992 SID#: 03807763 LOCATION: POLUNSKY INDIGENT DTE: NAME: ROBERTSON, MARK BEGINNING PERIOD: 07/01/12 PREVIOUS TDCJ NUMBERS: CURRENT BAL: 106.40 TOT HOLD AMT: 0.00 3MTH TOT DEP: 651.41 6MTH DEP: 1,071.41 6MTH AVG BAL: 41.60 6MTH AVG DEP: 178.57 MONTH HIGHEST BALANCE TOTAL DEPOSITS MONTH HIGHEST BALANCE TOTAL DEPOSITS 12/12 40.83 265.00 09/12 44.75 170.00 11/12 67.61 170.00 08/12 57.67 220.00 10/12 96.95 23.87 30.00 216.41 07/12 PROCESS DATE HOLD AMOUNT HOLD DESCRIPTION

STATE OF TEXAS COUNTY OF FOLK
ON THIS THE 30 DAY OF Januar .13, I CERTIFY THAT THIS DOCUMENT IS A TRUE,
COMPLETE, AND UNALTERED COPY MADE BY ME OF INFORMATION CONTAINED IN THE
COMPUTER DATABASE REGARDING THE OFFENDER'S ACCOUNT. NP SIG:
PF1-HELP PF3-END ENTER NEXT TDCJ NUMBER: \_\_\_\_\_ OR SID NUMBER:

News Re





#### Board Certified, Criminal Law - Texas Board of Legal Specialization

A team approach to criminal defense

F. Clinton Broden

Mick Mickelsen

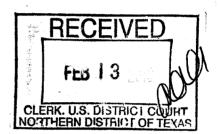
3-13CV0728-G

February 8, 2013

Clerk's Office U.S. District Court for the Northern District of Texas 1100 Commerce Street, Room 1452 Dallas, Texas 75242

Re:

Mark Robertson v. Rick Thaler, Director of TDCJ



Dear Clerk:

Please find enclosed the original Motion for Appointment of Counsel for the above-referenced case as well as a copy for the judge.

If you have any questions or concerns, please call me at the number below. Thank you for your assistance.

Sincerely,

Lucy Monreal Legal Assistant

Enclosure CC w/enclosure: Court of Criminal Appeals Capitol Station P.O. Box 12308 Austin, Texas 78711 。 《西**河南福**报》

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Clerk's Office
U.S. District Court for the Northern District of Texas
1100 Commerce Street, Room 1452